

August __, 2014

DRAFT ORDINANCE

**AN ORDINANCE
AMENDING CHAPTER 21 OF THE CITY CODE OF EL PASO, TEXAS, BY ADDING
SECTION ____, ENTITLED “____”; AND PROVIDING FOR PUBLICATION**

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

Chapter __ of the City Code of El Paso, Texas, is hereby amended by adding Sections 21-__ through 21-__, worded as follows:

Sec. 21-__. Introduction.

It is hereby declared to be the policy of the City of El Paso to prevent and eliminate wage theft in El Paso. Eliminating the underpayment or nonpayment of wages earned by persons working in the City serves the public interest:

- (1) by promoting financial security and dignity for workers and their families;
- (2) by promoting ethical business practices and economic development through the elimination of unfair economic competition by unscrupulous businesses that underpay or refuse to pay their employees; and
- (3) by ensuring due revenue for the public by rightly requiring employers to pay workers' wages and to face sanctions if they are in violation of this section.

Sec. 21-__. Definitions.

In the construction of this ordinance, the following terms shall have the following meaning, unless the context clearly indicates otherwise:

Wage Enforcement Coordinator shall mean the director of the city department or duly authorized designee responsible for identifying and investigating claims of wage theft.

Employer shall mean a person or entity engaged or authorized to engage in the ordering or procurement of labor or services or in the management of labor or services.

Employee shall mean a person performing services under the employer.

Wage shall mean any payment or compensation due to an employee, according to the rate applicable under state and federal law and this law.

Wage Theft Judgment shall mean any administrative or civil judgment for owed wages with no ability to appeal under the following:

1. Texas Payday Act, Texas Labor Code Sect. 61.019;
2. Texas Minimum Wage Act;
3. Fair Labor Standards Act; or
4. Texas common law.

Wage Theft Conviction shall mean any guilty plea or conviction with no further appeal under the Theft of Services Act, Tex. Pen. Code Section 31.04(a)(4).

Applicable City permits/licenses shall include the following:

1. Building Permits through the City Development Department for both employers and employers' properties.
 - a. Includes Generic Building Permits, Electrical, Mechanical, Gas and Plumbing permits
2. Food Establishment licenses through Public Health Department
3. The following specific permits and licenses:

Type of Permit:	Code Reference:
Ambulance Permits	6.40.040 thru 6.40.130
Alcoholic Beverages (Liquor License)	5.02.010 thru 5.02.170
Dealers in Secondhand Goods, Dealers in Crafted Precious Metals, Coin Dealers and Pawn Brokers	5.12
Automotive body repair shop, Automotive Storage Lot Operator, Automotive Repair Facility, Body Shop Facility with Storage Privileges	20.10.090
Automotive Parts Rebuilder	
Carnival Amusement	18.18.280
Charter Bus Operator	6.28
Common Market	
Concrete crushing site	
Dance Hall	
Dealers in Secondhand Goods	5.12.020 thru 5.12.180
Dealer- Vehicles, Parts, Accessories	5.11
Drain Layer	
Dealer in Motor Vehicles	5.11.010 thru 5.11.090
Dry cleaning & Laundries	5.08.010 thru 5.08.170
Farmers Market/Flea Market	5.04
Food Dealers (restaurants, street vendors, etc.)	9.12.005 thru 9.12.010
Gas dispensing site	18.24.010 thru 18.24.120
House Mover	
House Repair or Resale Lot	18.02.105.1

Type of Permit:	Code Reference:
Jitney Permit	6.24
Limousine Permit	6.32
Low Speed Shuttle Permit	
Metal Recycler/Secondhand Metal Dealers Resellers	20.10.520
Mini Warehouse	
Parking Facility	20.14.010 thru 20.14.080
Pedicab Permit	6.34
Retail Supply Dealer	5.15
School Vehicles	
Sexually Oriented Businesses	5.09
Sidewalk Sales and Performances (food; merchandise)	
Skeet Club/Shooting Gallery	
Storage Lot	
Street Vendors	5.15
Swimming Pools	5.05
Taxicabs	6.16
Tire transporter	
Used Vehicle Sales Lot, Used Parts & Used Accessory Dealer	
Valet Parking Services	
Vehicle Immobilization Service	
Wholesale Auto Jobber & Supply Dealer	
Vendors and Solicitors	5.15
Laundries	5.08
Animal Facilities (Kennels, Training Facilities, etc.)	20.10.080
Bakeries and Tortilla Factories	20.10.100
Mobile Food Vendors	12.46

Sec. 21-___. Wage Enforcement Database.

The City shall create and maintain on the City's website a publicly-accessible database of all employers that have a wage theft judgment or conviction against them.

The City shall send written notice to any employer included in the database. Employer will have 10 business days to protest its inclusion. Any protest will be assessed by the Wage Theft Appeal Process.

All employers will be removed from the database if the wage theft judgment or conviction is overturned, rescinded, or vacated, or if five years have passed since the entry of the wage theft judgment or conviction.

Sec. 21-___. Wage Enforcement Coordinator

The City will designate a Wage Enforcement Coordinator to receive and review wage theft complaints. This person will:

1. Create and maintain the Wage Enforcement Database;
2. Assess applicable sanctions if an employer is found liable for a wage theft judgment, answers “yes” to a previous wage theft judgment or conviction, or is found to be on the Wage Enforcement Database;
3. Monitor City Council meetings and review communications with City departments to determine if any employers seeking contracts, permits, licenses are in database; and
4. If no City contract or permit is involved, assist and advise persons with wage complaints by providing information on available remedies.

Sec. 21-___. Applications for City contracts, permits and licenses -- Affirmative Question On Wage Theft

The City shall include a question to all city contract bids, permits and license applications asking if the applicant or any of the firms expected to supply labor for or under the contract, permit, or license has been:

1. Assessed an administrative penalty;
2. Adjudicated in a civil court of committing wage theft; or
3. Convicted of wage theft in the last 5 years.

Construction permit application will also ask if the client company or any of the firms expected to supply labor for or under the permit has been assessed an administrative penalty, adjudicated in a civil court of committing wage theft, or convicted of wage theft in the last 5 years.

Any “yes” answers will be referred to the Wage Enforcement Coordinator to determine whether to add employer to Wage Enforcement Database and administer sanctions.

Sec. 21-___. Applications for City contracts, permits and licenses -- Wage Enforcement Process

Any City contracting body will submit the names of all proposed contracting parties (and their sub-contractors) to the Wage Enforcement Coordinator. The Coordinator will have 10 business days to advise the contracting body of any named employers in the Wage Enforcement Database or otherwise found to have been subject to a wage theft judgment or conviction.

Any City department responsible for applicable permits or licenses will check the Wage Enforcement Database against the names of all party applicants. If any party applicant names appear in the database, the department will submit the names to the Coordinator. The Coordinator will determine sanctions.

Sec. 21-___. Wage Theft Complaint Process - City Contracts.

The City will implement a complaint process to be used by any person to report a violation of unpaid wages for work performed under City contracts or by firms who are recipients of economic incentives by the City. Complaints will go to the Wage Enforcement Coordinator.

Wage Enforcement Coordinator will notify the general contractor of the City contract and the offending employer if she finds the employer to be liable. If the issue is resolved, then the matter is closed. Otherwise, she will refer it to the Texas Workforce Commission. Upon adjudication by the Texas Workforce Commission or any other competent court of proper jurisdiction or agency, the employer will then be sanctioned according to this ordinance and added to the Wage Theft Database. The general contractor shall be subject to the same sanctions and bond requirements listed herein as the offending sub-contractor employer if the complaint is not resolved.

Upon a finding that the employer is liable, the Wage Enforcement Coordinator may also, within her discretion, require the employer to file a bond in such a sum as the Wage Enforcement Coordinator deems reasonable and adequate in the circumstances, with sufficient surety, to fulfill the obligation to pay both past-due wages and additional wages in accordance with this ordinance for a definite future period not exceeding six months.

Sec. 21-___. Wage Theft Complaint Process - Appeal Process.

If an employer protests its inclusion in the Wage Theft Database or the assessment of any sanctions pursuant to this ordinance, the City will appoint a hearing officer to hold hearings, during which parties can submit evidence, cross-examine witnesses, obtain subpoenas, testify under oath, and be heard.

If the protesting employer disputes a complaint that it failed to pay owed wages to any of its employees, the protesting employer has the burden of proof to establish by a preponderance of evidence that it did pay the owed wages.

If the protesting employer disputes the authenticity of any wage theft judgment or conviction, the City has the burden of proof to produce documents assuring authenticity of the wage theft judgment or conviction. Authenticity will be governed by the Texas Rules of Civil Procedure Section 901 and 902.

A protesting employer will have no further appeal remedies if the underlying wage theft judgment or conviction is deemed authentic by the hearing officer.

Sec. 21-___. Retaliation Prohibited.

No contractor or employer shall retaliate against any person who files a complaint with the Wage Enforcement Coordinator. If the Coordinator determines that there was retaliation, the employer will face sanctions listed in the ordinance.

Sec. 21-___. Sanctions and Penalties -- City Contracts.

The City contracting body will terminate any existing contract with a firm that the Wage Enforcement Coordinator determines is liable for failure to pay owed wages or is included in the Wage Enforcement

database. That firm will also be ineligible to apply for a City contract for five years following the Wage Enforcement Coordinator's finding of liability.

Sec. 21-___. Sanctions and Penalties -- City Permits and Licenses.

For firms that: (1) are included in the Wage Enforcement database; and (2) currently hold, or request to apply for or renew an applicable City permit or license defined herein, the appropriate City department will revoke or deny such license or permit.